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5 Attorneys for Plaintiff,

MOUNT & STOELKER, A PROFESSIONAL CORPORATION

8 UNITED STATES DISTRICT COURT

9 NORTHERN DISTRICT OF CALIFORNIA

10 SAN JOSE DIVISION

11 MOUNT & STOELKER, P.C.

CASE NO.: 08-CV-03660 RMW

12 Plaintiffs,

13 -v-

14 C-ONE TECHNOLOGY; PRETEC
15 ELECTRONICS CORPORATION

16 Defendants.

**NOTICE OF MOTION AND MOTION
TO REMAND REMOVED ACTION
BACK TO STATE COURT AND
SANCTIONS
28 USC § 1447(c)**

Date: September 19, 2008

Time: 9:00am

Ctrm: 6

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18 TO DEFENDANTS AND THEIR ATTORNEY OF RECORD:

19 PLEASE TAKE NOTICE THAT, on September 19, 2008 at 9:00 am, in Courtroom 6, 4th
20 Floor of the above-entitled court, Plaintiff Mount & Stoelker, A Professional Corporation, will move
21 this court for an order remanding this action back to state court and for an order requiring Defendants
22 to pay fees and costs. This motion is made on the following grounds: Defendants failed to seek
23 removal within 30 days of receipt of the state court complaint as required by 28 USC § 1446(b);
24 Defendant Pretec Corporation is a citizen of the state of California, has appeared in the state court
25 action and therefore removal is improper pursuant to 28 USC § 1441(b); complete diversity of
26 citizenship does not exist between plaintiff and all the defendants and therefore removal jurisdiction
27 does not exists pursuant to USC § 1441(b); and the removal was not objectively reasonable which
28 entitles Plaintiff to recover fees and costs incurred in seeking a remand pursuant to 28 USC §

1 1447(c).

2 This motion is based upon this notice of motion, defendants' notice of removal along with the
3 accompanying exhibits, the pleadings and files in this action and the related federal case action
4 entitled *C-One Technology v. Mount & Stoelker, P.C.*, CV 08-02442 MEJ, the declaration of Jerry R.
5 Hauser and upon such other further evidence and argument presented at the hearing of this motion.

6 DATE: August 1, 2008

PHILLIPS, GREENBERG & HAUSER, L.L.P.

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8 By:

JERRY R. HAUSER